IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12/09/2003

CORAM

THE HONOURABLE MR.JUSTICE R.JAYASIMHA BABU
and
THE HONOURABLE MR.JUSTICE N.V.BALASUBRAMANIAN

Writ Petition No.42470 of 2002
and W.P.Nos. 42471, 44339 of 2002
and
O.A.Nos.908 of 2002
in
CS.Nos.904 of 2002 and
96, 131, 459, 460 & 578 of 2003
in
C.S.No. 59 of 2003

Writ Petitions

The Madras Medical Mission,
4-A Dr. J.J. Nagar, Mugappair,
Chennai 600 050, represented
by its Hon. Secretary K.V. George ..Petitioner in
all the
Writ Petitions.
-Vs-

1. State of Tamil Nadu represented by
its Chief Secretary to Government,
Fort St. George, Chennai 9.

2. The Secretary to Government,
Commercial Taxes Department,
Secretariat, Chennai 9.

3. The Inspector General of Registration,
120 Santhome High Road, ..Respondents 1 - 3
Chennai 28. in W.Ps.42470 and
42471 of 2002
4. The District Registrar,
Chennai (Central),
Chennai-18. ..Respondent 4 in
W.Ps. 42470 and 42471 of 2002 & Respondent in WP
No.44339 of 2002
5. Dr. K.M.Cherian
6. P.V.Thomas
7. K.N.Oommen ..Respondent 5 - 7

in W.Ps.42470 and
42471 of 2002
(Respondents 5 to 7 impleaded as
per orders of the Court on 05.12.2002
in WPMPs.64063 & 64064 of 2002; on
11.12.2002 in WPMPs. No.65263 and
65264/2002; on 10.03.2003 in WPMPs.
No.66222 and 66223 of 2003.)

O.A. No.908 of 2002 in C.S.No.904 of 2002

Mrs. George John Nellimala ..Applicant

vs.

1.The Madras Medical Mission,
No.4-A Dr. J.J. Nagar, Mogappair,
Chennai 50.

2.K.V. George ..Respondents

O.As.No.131, 96, 459, 460 & 578 of 2003
in C.S.No.59 of 2003

Alex Jacob ..Applicant

vs.

1.K.V.George
2.K.M.Cherian ..Respondents

Writ Petition No.42470 of 2002 filed under Article 226 of the Constitution of India for the issue of writ of declaration declaring that Sections 34-A and 34-B of the Tamil Nadu Societies Registration Act, 1 975, Act 27 of 1975 are ultra vires, null and void.

Writ Petition No.42471 of 2002 filed under Article 226 of the Constitution of India for the issue of writ of certiorari to call for the records of the Secretary to Government, Commercial Taxes Department, Reference No.23247/M/2002-03 and quash the order dated 20.11.2002 made therein.

Writ Petition No.44339 of 2002 filed under Article 226 of the Constitution of India for the issue of writ of mandamus directing the District Registrar, Chennai (Central), to comply with the provisions of Section 36(9) of the Tamil Nadu Societies Registration Act, 1975, and communicate the result of the inquiry under Section 36(1) and accept the information materials and documents furnished by the petitioner society and discharge his duties under Section 36 of the Act.

Application No.908 of 2002 is filed in C.S. No.904 of 2002 seeking an order of interim injunction restraining the respondents, their men and agents from in any manner convening an Extraordinary General Body Meeting for amendment of By-laws specified in notice dated 27.11.200 2 to be held on 20.12.2002 or any other date pending disposal of the suit.

Application No.96, 459 and 460 of 2003 are filed in C.S. No.59 of 20 03 seeking for a direction to the Managing Committee of the first respondent to render account of all the money received from the students including capitation fee and money expended or donation received; for an order of interim injunction restraining the first respondent from enlisting the students for medical course under PIMS controlled by it pending disposal of the suit; and for a direction to the Managing Committee not to work against the main objectives of the first respondent, namely Clauses 1, 1(A), and 2 of the Memorandum of Association.

Application No.131 and 578 of 2003 are filed in C.S. No.59 of 2003 praying to appoint an Advocate Receiver to take charge and administer all the affairs of the first respondent till the first respondent is able to come out of the litigation in WP. No.42470 of 2002 and the present suit; and for a direction to the first respondent to deposit in a separate no-lien account the interest free refundable caution deposit, capitation fee etc., in any nationalised Bank to be collected from the students who are likely to be admitted for the academic year 2 002-03 pending disposal of the suit.

!For Petitioner in all
the writ petitions and
for respondents
in OA.908 of 2002
and for Respondent 1
in O.A.Nos.96, 131, 459, : Mr.Sriram Panchu,
460 & 578 of 2003 Senior Counsel
for Mr.V.Achuthan
^For Respondent in
WP.44339/2002; Mr.N.R.Chandran,
For respondents 1 to 4 : Advocate General,
in W.P.Nos.42470 and : assisted by
42471 of 2002 : Mr.D.Krishnakumar,
Spl. Govt. Pleader
For Respondent 5
in WP.Nos.42470 & 42471 : Mr.K.Chandru,
of 2002 & for Applicant : Senior Counsel
in OA 908/02 : for Mr.Yashod Varadhan

For Respondent 6 in
W.Ps.42470 & 42471/2002, :
for respondent 2 in :
O.As.96, 131, 459, 460 :
& 578 of 2003 : Mr.S.Prabhakaran

For Respondent 7 in

WPs.42470 & 42471/2002; : Mr.S.Somayaji,
& for Applicant in : Senior Counsel
OAs.96, 131, 459, 460 : for Mr.Jeyesh Dolia
& 578 of 2003 :

:ORDER

R.JAYASIMHA BABU, J.

The common petitioner in these writ petitions--the Madras Medical Mission (MMM) whose membership is confined to Orthodox Syrian Christians--was registered 12.01.1982 as a Society under the Tamil Nadu Societies Registration Act, 1975 (Tamil Nadu Act 27/1975). It's President is Bishop of that Church at Chennai. It presently has 135 members. The objects of the Society are primarily to establish hospitals, conduct research studies in medicine and run educational institutions including medical colleges.

2. MMM owns and runs a well known super speciality hospital: Institute of Cardio Vascular Diseases (ICVD), which was established in the year 1987, as also the Institute for Reproductive Medicine and Women' s Health (IRM) and a Transplant Center at Chennai. The assets at Chennai are valued at about Rs.55 Crores. It has recently established at Pondicherry, the Pondicherry Institute of Medical Science (PIMS), which comprises of a 300 bed hospital and a medical college with an annual intake of hundred students. The hospital at Pondicherry commenced functioning in mid 2001 and the college admitted it's first batch of students in 2003. The estimated cost of the PIMS is Rs.80 crores of which about Rs.45 crores has been already invested.

3. The number of it's employees at Chennai is 794, whose mothly pay bill is about Rs.79 lakhs. At Pondicherry, the employees number 881 of whom 162 are doctors. The monthly pay bill is Rs.81.21 lakhs. The annual income generated at Chennai is about Rs.47 crores. The highest paid employee of MMM is the life time Director of ICVD, Dr.K.M. Cherian, whose annual remuneration of Rs.1.73 crores plus numerous valuable perquisites is over seven times that of the next highest salaried employee of the ICVD. The proceedings initiated at his instance is the cause for this litigation.

4. Dr.Cherian, who is a signatory to the memorandum of Association of MMM was its first Vice President and has been a member of the Board of MMM throughout, except for a short period. On 5.2.2000 he was entrusted by the Board of MMM with the additional responsibility of Chairman of the PIMS. On 14.9.2001--by which date the Pondicherry Government had given its no objection to the establishment of PIMS by MMM, the Pondicherry University had given its, in principle, consent to grant affiliation; the Government of India had granted a letter of intent for establishing a new medical college by MMM at Pondicherry; the construction of a ten storey hospital building of the PIMS had been completed and the hospital had started functioning--Dr. Cherian along with his wife and son and few of his friends registered a society at Pondicherry under the Societies Registration Act, 1860, with the name, "Pondicherry Institute of Medical Sciences", the very name under which MMM was establishing the medical college and hospital at Pondicherry. The

registration of that society was without the knowledge or consent of the Board of MMM. The Constitution and Bye-laws of that society provided that Dr.Cherian was to be it's Chairman and Chief Executive for life.

5. After the formation of that society, Dr.Cherian secured a letter from the Pondicherry Government in March 2002 certifying the minority status of the PIMS 'run by the PIMS Society'. On 8.4.2002 Dr. Cherian wrote to the members of the MMM about the formation of his society and his consultation with financial and legal experts for transferring to his society the right of management of PIMS. All this was done without informing or obtaining the consent of the Board of MMM and at a time when he was still functioning as Chairman of the PIMS, a position which required him to safeguard the interest of MMM and not to do anything against the interest of MMM.

6. On 16.4.2002, Dr.Cherian was suspended from his position of Chairman of PIMS. A month later he challenged that order in this Court by filing C.S.No.322 of 2002, but was unsuccessful in regaining that position.

7. It was in this background that Dr.Cherian on 12.9.2002 addressed a letter to Mr.Shaktikanta Dass, Secretary to Government, Department of Commercial Taxes on the subject 'mismanagement of Madras Medical Mission', which led to the developments culminating in the issue by the Secretary to the Government of the impugned show cause notice, dated 20th November 2002, under S.34-A of the Tamil Nadu Societies Registration Act (Tamil Nadu Act 27 of 1975) proposing the supersession of the Committee of MMM by appointing a special officer.

8. In that letter of 12.9.2002, Dr.Cherian had sought the supersession of the Committee of MMM under s. 34-A of the Tamil Nadu Act 27 of 1975. He alleged in that letter that that MMM had violated various provisions of the Tamil Nadu Act 27 of 1975 and the Rules made thereunder--S.15 (3) by reason of proxy having been allowed for electing members of the managing committee; S.29 (f) as minutes were being typed and pasted in the Minutes Book; S.29 (3) by reason of Minutes Book not having been made available to him; and S.15 (6) which provision was deleted by Act 19 of 2000 and which provision during the period it remained on the statute book prohibited members continuing in the managing committee for more than six years at a stretch. Dr.Cherian, though he had knowledge of all this all along having been a signatory to the memorandum and having been a member of the Board almost continuously, had not taken any steps to set right these matters for nearly fifteen years and had also not regarded these matters as warranting the appointment of a Special Officer under s.34-A.

9. It was also alleged in that letter that funds belonging to ICVD had been diverted to IRM, though both are but divisions of MMM neither of which has a separate profit and loss account. Financial irregularities were alleged against the Secretary and Treasurer and certain other members of the Board of MMM. The action taken by MMM by way of writing letters to Pondicherry Government with regard to his suspension from Chairmanship of the PIMS Committee was yet another ground for his complaint.

10. That letter of Dr.Cherian was sent by the Secretary to the Inspector General of Registration on 18.9.2002 with a request to send a detailed report to the Government on the contentions made therein.

11. On 10.10.2002, the Inspector General of Registration decided to initiate an enquiry under S.36 (1) of the Tamil Nadu Act 27 of 1975 and nominated the District Registrar, Chennai Central to hold the enquiry. The Enquiry Officer on the same day informed MMM that he proposed to hold an enquiry into the constitution, working and financial condition of the society.

12. The enquiry commenced on 22.10.2002 at the office of MMM and continued on 23rd and 24th. On 22.10.2002, as noted by the Enquiry Officer, Dr.Cherian gave a further detailed account of his allegations against some members of the Governing Board of MMM. Those allegations were also enquired into by the Enquiry Officer.

13. Several members of the Board of MMM as also Dr.Cherian and K.N. Ommen a member of MMM, who had complained with regard to his nonelection at an AGM on account of use of proxies, and the rejection of his nomination at a subsequent Annual General Meeting, also took part in the enquiry. In his report the enquiry officer had noted that during the time of enquiry, evidence for both the parties to substantiate their stand were collected.

14. The enquiry officer rejected the allegation made by Dr.Cherian that MMM was not acting in furtherance of its objects. He held that "Hence the Madras Medical Mission is acting in furtherance of its objects". He found that the accounts are audited by Chartered Accountants who are appointed at the General Body. He did not find anything improper or incorrect in those accounts. He rejected Dr.Cherian's contention that the Institute of Reproductive Medicine and Women Health need not have been started because it makes losses, and held that ' profit making cannot be a motive of the society'.

15. He held that there was no proof to show that the Lokavani Press had made huge profits by doing the printing work for MMM-work which it had done for MMM from MMM's inception in 1982, and which work according to its owners who are also Members of the managing committee of MMM, were done free or at lower charges.

16. Allegations made against two other Board members who owned the company Asian Tech, were found to be untrue as no amount had been paid to them for their services in supervising the construction work of PIMS.

17. The allegation made against the Treasurer that he had enriched himself by supplying cement was found to be untrue as the "..rate of cement quoted to MMM is lesser than the market value".

18. Regarding the allegation made against the Secretary, the enquiry officer found that the company owned by him had supplied 32 concrete poles and 32 cross arms at the rate of Rs.3500/- per set as per specification. Despite the quotation for similar item at Rs.4300/- to another buyer having been shown

to the enquiry officer and the Secretary's submission that supply to MMM was at a lower price, the enquiry officer held that in the absence of any quotation from any other supplier offering to supply the product to MMM, the MMM had favoured the Secretary's company. The value of this supply, quality of which was not disputed, is rupees one lakh and ten thousand.

19. As regards the allegation of K.N.Ommen that his nomination for election to the Committee held on 26.10.2002 had been improperly rejected, the enquiry officer held that the rejection was justified as Ommen's name was found in the nomination paper only as proposer.

20. In so far as the constitution and functioning of the Society was concerned, the enquiry officer recorded certain findings which have been incorporated in the impugned notice of 20.11.2002 sent by the Secretary to the Government. That notice was issued by the Secretary after he received the report of the enquiry officer through the Inspector General of Registration.

21. The Inspector General of Registration while sending the report of the enquiry officer to the Secretary had, in a casual manner, and without comprehending the full import of the enquiry report, opined inter alia, that 'serious violations in financial management' had been noticed, even though no serious violation of financial management had been found, and proceeded to recommend to the Government that the Committee of MMM be superseded.

22. The notice dated 20.11.2002 sent by the Secretary to the Government to the President, Vice President, Secretary and Treasurer of the MMM, reads as under:-

"Sub: Societies - Tamil Nadu Societies Registration Act 1975 - Madras Medical Mission (Regd. No.1/1982) - Supersession of Committee under Section 34A of TNSR Act, 1975 by appointing Special Officer to manage the affairs of the Society - Show cause notice - issue of - regarding.

The Madras Medical Mission is a registered society registered in 198 2 under the Tamil Nadu Societies Registration Act 1975. Dr.K.M. Cherian, Director, Madras Medical Mission, presented a petition reporting various irregularities in the administration of the Society. He has represented about the violation of the provisions of the Act and Rules and also financial mismanagement. Thiru K.N.Ommen a member of Madras Medical Mission in his representation has also brought to the notice of Government various irregularities in the administration of the Madras Medical Mission. The Inspector General of Registration was requested to send a detailed report on the above representations.

2. The Inspector General of Registration has appointed the District

Registrar, Chennai (Central), under Section 36 (1) of the TNSR Act 19 75 as an Enquiry Officer in this matter. According to the findings of the Enquiry Officer, the following irregularities/lapses were noticed:-

I. Constitution of the Society:

(i) Bye-law No.47 envisages the Bishop of Madras Diocese to hold the Presidentship of the Society for the term for which he is the Bishop. This provision contravenes section 15 (3) and 15 (40 of the Act, according to which the members of the Governing Board should be appointed in the General Body and should hold office not exceeding three years.

(ii) In Bye-law No.45, the Governing Board has been empowered to coopt members to fill up vacancies in the Governing board. This provision goes against the section 15 (3) of the Tamil Nadu Societies Registration Act, which warrants filling up of casual vacancy only by the General Body.

(iii)By-laws No.44 is in contravention of the provision of Section 2 6(2) of the Act as 14 days of notice for calling General Body Meeting has been provided instead of minimum 21 days provided in the Act.

II. Functions of the Society:-

(iv)Proxy can be allowed only for the specific purpose of adopting special resolution as set forth in Section 2 (J) of the Act. Proxy is not allowed for any other purpose either in bye-law or in the Act. However the society has allowed proxies to participate in the General Body and to cast their votes for election of Governing Body members. In fact, one candidate Thiru K.N.Ommen, for Governing Board member, lost in an election due to admittance of proxies. This is utter violation of section 2 (J).

(v) The Bye-law No.41 has been amended increasing the total number of the elected members of the Governing board from 14 to 20 members on 19.8.1995. This amendment has not been registered with the Registrar of Societies as required under section 12 (3) of the Act. Hence the

Society has violated the provisions of section 12 (3) of the Act. Hence the Society has violated the provisions of section 12 (3) by not registering the amendment.

(vi) According to the "Register of Members", there were only 5 members at the time of registration of the Society (i.e. 12.1.1982). However, in the memorandum and in the Bye-law submitted before the Registrar for registration, 9 persons were shown as members of the society. There should have been at least 7 members for registering the society as required in Section 7 (2). Hence the legality of registration itself is questionable.

(vii) According to section 15 (2) read with Rule 17 (2), the notice of any change among the members of the society shall be filed in Form VII before the Registrar. After the registration of the society, there have been several changes in the members of the society. The notices in Form VII regarding changes have not been filed at all with the Registrar. Hence the society has wilfully failed to adhere to the provision of section 15 (2) read with Rule 17 (2).

(viii)The General Body Meetings to elect 1/3 members to the Governing board had been held every year from 1983. The notice regarding changes of Governing Board members for the year 1988, 89, 91, 92, 9 3, 94, 95, 96, 98, 99, 2000 and 2001 were not filed with the Registrar. This is in violation of Section 15 (2).

(ix) The Minutes Book is not maintained properly as provided in Section 29 of the Act.

III. Financial aspects:

(x) The Society had not submitted approved Balance sheet, Receipts and Expenditure Statement for the following financial years 1983-84, 1984-85, 1987-88, 1990-91, 1997-98 and 1999-2000. Thus section 16 (3) and Rule 22 have been violated in respect of the above mentioned years.

(xi) The Secretary Thiru K.V.George has entrusted contract to supply 32 poles through M/s Concrete Product Poles Limited of which he is the director. By doing so, an act of financial impropriety has been committed.

3. Further, it has been reported that the President has not attended any of the meetings of the Governing Board. The very fact that the President has not attended even one meeting shows that the Governing Board is not functioning properly. Taking into account all the above aspects, the Government consider that the affairs of the society are not being properly managed and the Committee of the Society has contravened provisions of the Act and the Rules thereunder.

4. After careful examination, the Government consider that the existing committee of Madras Medical Mission be superseded by appointing a Special Officer under section 34A of Tamil Nadu Societies Registration Act, 1975 for a period of one year. I am therefore directed to request you to make representations if any within 15 days of receipt of this letter to the Government. If no reply is received within such period, the Government will issue final order on merits and on the basis of available document."

23. Immediately after the receipt of this notice, the Governing body of MMM met on 23.11.2002, and convened a General Body Meeting for being held on 20.12.2002. The agenda for that meeting was to consider the passing of special resolutions to amend Bye-laws 44, 45, 47, and 90, as in the notice

sent by the Secretary to the Government it had been pointed out that those bye-laws were not in conformity with the provisions of Tamil Nadu Act 27 of

1975. The existing bye-laws 44, 45 , 47 and 90 and the proposed amendment to those bye-laws as set out in the notice issued on 27.11.2002 for the 'General Meeting to amend Bye-laws to be held on 20.12.2002', read as under:-

"Existing by-laws & Proposed Amendments (in bold)

44. In case of more nominations than the required number, election should be held giving 14 days clear notice of such election to the member of the Society. Such election shall be by secret ballot.

44. In case of more nominations than the required number, election should be held giving 21 days clear notice of such election to the members of the Society. Such election shall be by secret ballot, by notice of such election to the members of the Society. Such election shall be by secret ballot, by members present and voting and not by proxy.

45. The Board shall have the power to co-opt members to fill up casual vacancies in the Board. Such persons shall hold office till the next Annual General Meeting. At the Annual General Meeting persons to fill up the remaining part of the term are to be duly elected.

45. If there are casual vacancies in the Board, persons to fill up the remaining part of the term are to be duly elected from among the members, during a General Meeting of the Society.

47. President : The President elect shall be ex-officio and shall hold office for the term for which he is Metropolitan of the Madras Diocese of the Church.

47. President : The President shall be elected by the Board from among the members of the Board and shall hold office for the term for which he is a member of the Board.

90. A 3/5 majority of the members present an voting at a meeting specially convened for the purpose and a simple majority of the total membership voting in person or by proxy is required for amending any of these bye-laws.

90. A s majority of the members present and voting in person or by proxy at a meeting specially convened for the purpose is required for amending any of these bye-laws.

We have come to know from the above referred letter of the Secretary to Government (Commercial Taxes), that the above amendments are necessary to bring our bye-laws in line with the TNSR Act, 1975.

The quorum of this General Meeting to amend the bye-laws through special resolutions shall be 102, i.e. 3/4th of the members of MMM, present in person

or by proxy.

24. On 25.11.2002, the petitioner filed two writ petitions in the first of which it sought a declaration that s.34-A and s.34-B of Tamil Nadu Act 27 of 1975 were ultra vires, null and void and in the second petition sought the quashing of the letter dated 20.11.2002 from the Secretary to the Government. When those petitions came up before the Court an undertaking was given by the Government through it's counsel that no further proceedings adverse to the interest of the petitioner will be taken till the court passes orders on the writ petitions.

25. by-laws 47, 45, 44 and 90, in their present form are part of the by-laws as originally registered. It is the case of the petitioner that there were no mala fides in doing so; that immediately after their non-conformity with the provisions of the Act was brought to the notice of the Board of MMM, prompt action was initiated to amend those by-laws and bring them in conformity with the provisions of the Act. It is the further case of the petitioner that those by-laws have even in their present form not caused prejudice to any one, inasmuch as the President of the Society was to be the Bishop, who would have otherwise been periodically re-elected. The Board had rarely co-opted any members and such co-option had not had any adverse effect on the work of the Society. Although bye law 44 had provided for convening of meeting by giving 14 days notice, all gene ral meetings were in fact convened after giving 21 days notice.

26. On 18.12.2002, two days before the day on which the General Body was to meet for the purpose of considering the amendment to the bylaws, one Mrs.George John Nellimala filed C.S.No.904 of 2002 on the original side of this Court along with an application 905 of 2002 seeking temporary injunction against the holding of the meeting. The learned single Judge, considering the fact that the writ petitions filed by the petitioner on 25.11.2002 were pending, directed that that application be posted before Court along with those writ petitions. Pending an order being made by the Court on the application, the respondents in the suit were directed to postpone the extra-ordinary general meeting.

27. The petitioner has placed before Court material to show that the General Body Meetings of MMM were in fact convened after giving 21 days notice, even though it had wrongly provided in the bye law that the period of notice was to be 14 clear days. Copies of the notices dated 23.3.89, 20.5.90, 31.5.91, 1.7.93, 19.7.95, 28.8.96, 7.8.97, 16.8.2001, 28.9.2002 and 27.11.2002 calling meetings on 23.9.89, 15.9.90 , 21.9.91, 31.7.93, 19.8.95, 21.9.96, 30.8.97, 15.9.2001, 26.10.2002 and 20.12.2002 respectively have been filed into court by the petitioner.

28. According to the petitioner, notices of change among the governing board members and of the resolution amending bye law 41, increasing the strength of the executive committee from 14 to 20, had also been filed, though the receipts regarding such filing could not be traced. Petitioner has stated that a fresh set of all those documents would be filed with the Registrar.

29. Petitioner has also produced documents to show that the documents required to be filed under s.16 (3)--the annual report and expenditure account, balance sheet and report as also list of members together with a declaration that the society has been in operation during the preceding year have in fact been filed. The documents are receipts issued by the office of the Registrar on 14.2.2001, 30.10.2000, 28.1 0.99, 23.10.98, 14.10.97, 24.10.96, 6.10.95, 10.10.94, 16.8.93, 23.9.92, 6.11.91, 25.9.90, 19.12.89, 2.4.88, 9.7.87, 29.4.86 and letters dated 20.4.85, 30.8.84 and 29.4.83 under cover of which the documents were filed for those years.

30. So far as the use of proxies at the election to the Committee is concerned, it was submitted that it was due to the misunderstanding of the relevant provisions of the Act on the part of the MMM, and that immediately after it was made aware of the fact that the Act does not permit use of proxies at the election and that proxies are permitted only for the purpose of passing of special resolutions, the Board of MMM initiated action by convening a general meeting for the purpose of amending the relevant bye law and providing specifically therein that proxies shall not be permitted in the elections to the committee. It is also the case of the petitioner that rarely had any candidate been unable to get elected to the committee by reason of proxies having been permitted to be used at such elections and that the defeat of the complainant Oommen was at an election held six years ago in the year 1997, and that there was no such instance thereafter.

31. Regarding the registration of the Society, it was submitted that there can be no doubt regarding the legality of such registration as every subscriber to the memorandum is a member by the very act of subscribing, and further that the names of all the subscribers are in fact found in the Register of members, even though at the time of registration of the society the register of members showed the names of only five. The legality of the registration made in the year 1982 had never been doubted and the society's

registration continues to be valid, and even the proceedings sought to be taken by the respondent is on the basis that MMM is a registered society under the Act.

32. Regarding the minute book, it is the case of the petitioner that the minutes maintained by it are in accordance with Section 29 of the Act as all that the section requires is that the minutes of the proceedings of the general meeting and of the committee shall be entered in books kept for the purpose. The pasting of typed minutes in a book instead of writing by long hand, according to the petitioner does not in any way contravene Section 29.

33. As regards the alleged non-attendance of the President at any of the meetings of the governing body, and the inference drawn from that alleged non-attendance of the President that the governing body was not functioning properly, it is submitted for the petitioner that that assumption is factually erroneous and the inference drawn unwarranted, even if the assumption is correct.

34. It is the case of the petitioner that the previous Bishop who

prior to his demise was the President, as also the present Bishop-the current President-had in all attended 46 meetings of the governing body, and that 7 of the 20 annual general meetings had been presided over by the President. The financial accounts for 16 years out of the 2 0 years for which the society has been in existence, had also been signed by the President.

35. It was pointed out by counsel for the petitioner that the statement in the notice regarding the alleged non-participation by the President in the meetings of the Board was based upon the copy of the letter dated 14.6.2002, addressed by the Bishop to Dr.Cherian, a copy of which had been forwarded by Dr.Cherian to the Secretary to Government on 5.11.2002. In that very letter, the Bishop himself had stated, "...I have attended a few Board Meetings". He has also stated therein, "I got notices for the Board Meetings. Usually such meetings take place on Saturday at evenings when I will be away visiting churches". According to the petitioner, that very letter shows that the President had at all times been notified about the board meetings and that the committee could not possibly be faulted if he did not attend some of the meetings on account of his other duties, and further that the president had himself categorically stated that he had attended a few of the board meetings. The statement made in the letter of the Secretary to Government in paragraph 3 that the President had not attended any of the meetings of the governing board was, therefore, not correct.

36. The fact that the President/Bishop was fully aware of all that was happening in the society was, according to the petitioner, clearly borne out by the letter sent by the Bishop as President of the MMM on May 22, 2002, to the Government of Pondicherry, with regard to the affairs of the PIMS. That letter of the Bishop reads as under:-

"MADRAS MEDICAL MISSION
To
Mr.B.Vijayan,
The Principal Secretary to the Government,
(Health Department)
Government of Pondicherry,
Chief Secretariat, Pondicherry 1.

Respected Sir,

Sub : The Pondicherry Institute of
Medical Sciences

1.This is to bring to your kind attention that Dr. K.M.Cherian, Chairman of the Manging Committee of the Pondicherry Institute of Medical Sciences (PIMS), appointed by the Madras Medical Mission (MMM) a registered society, has without the knowledge, concurrence or sanction of the MMM, registered a society in the same name of Pondicherry Institute of Medical Sciences purportedly to run the PIMS, the Medical College being established by the MMM.

2.Taking serious note of the above action, the Governing Board of the MMM decided at its extraordinary meeting chaired by Mr.Varghese Eapen (Vice President) on the 16th of April 2002 at 8.00 %am, to issue notice to Dr.K.M. Cheiran to retract his actions against the interest of the Madras Medical Mission within three (3) months, and ask him not to continue as the Chairman of the Pondicherry Institute of Medical Sciences of the MMM during this period, and that during this period all powers and responsibilities of the Chairman shall be vested with the Hon. Secretary of MMM Mr.K.V. George.

3.We inform you further (a) PIMS is promoted, funded, owned and run by the Madras Medical Mission and currently Dr. K.M. Cherian is not the Chairman of the Pondicherry Institute of Medical Sciences, and that (b) the MMM has not given any permission to Pondicherry Institute of Medical Sciences (Society) of which Dr. Cherian claims to be the Chairman for life, to manage the affairs of the PIMS of the Madras Medical Mission or any of its affiliate institutions to be established.

4.We therefore request you not to entertain any communication from Dr.K.M.Cherian in the capacity as Chairman of the PIMS sponsored by the Madras Medical Mission or in connection with the establishment of the PIMS or its affiliate institutions. All such correspondences henceforth may please be addressed to Mr.K.V.George, Hon. Secretary to MMM and Officiating Chairman, PIMS.

5.Please find enclosed a true copy of the decisions taken at the extraordinary meeting of the Governing Board of the MMM held on April 15 th 2002 referred above for your perusal and necessary action.
Thanking you,
Yours faithfully,
Sd/-
Bishop Dr.Yakob Mar Irenaios,
President (MMM)"

37. In these writ petitions, Dr.Cherian, Mr.Oommen as also one P.V. Thomas have been impleaded at their instance. As the copy of the enquiry officer's report was not furnished by the Government to the petitioner, petitioners filed W.P.No.44339 of 2002, during the pendency of which petition copy of the enquiry report was furnished pursuant to the direction of this Court.

38. Besides the challenge to the notice issued by the Secretary to the Government on 20.11.2002 and the statutory provisions under which it was issued, we are also required to consider and decide certain applications filed by Alex Jacob, who filed C.S.No.59 of 2003 on the original side of this Court on 27.1.2003. He is one of the friends of Dr.Cherian, who had joined him in forming and registering the new society at Pondicherry on 14.9.2001. Though he has impleaded Dr. Cherian as second defendant in the suit, the case pleaded by him is in fact the case of Dr.Cherian. The suit was filed with a view to obstruct the smooth functioning of the new medical college for securing control of which Dr.Cherian along with Alex Jacob and others had registered the new society with the same name as the one under which MMM had

established the college and hospital, and which scheme had been frustrated by the suspension and subsequent removal of Dr.Cherian as Chairman of MMM's PIMS.

39. Prior to the institution of suit C.S. 59 of 2003, Dr. Cherian had been, on 16.11.2002, removed by the Board of MMM from his position as Chairman of the PIMS. Dr. Cherian had also challenged that removal by filing C.S.No.848 of 2002. He had also preferred O.S.As.7 and 8 of 2003 against the order dated 23.9.2002 of the learned single Judge, in C.S.No.322 of 2002 dismissing his applications for stay of his suspension and for an injunction. Dr.Cherian had in addition filed W.P.No.44393 of 2002 to prevent the Pondicherry University from granting affiliation to the PIMS after he had been frustrated in his attempt to divest MMM of it's control of PIMS. That writ petition of Dr. Cherian was dismissed by the Division Bench on 6.2.2003. While doing so, the Bench allowed the petition that had been filed by MMM for a direction to the Pondicherry University to grant affiliation. The Court had also directed that the amounts collected as 'Deposit' from the students be kept in a separate account as a fixed deposit pending decision of this Court in a pending writ petition in which the method of allotment of seats, the extent of government quota, and the mode of fixation of fees had been challenged. The judgment of the Division Bench is reported in 2003 W.L.R. 214.

40. The result of the O.S.As. 7 and 8 of 2003 filed by Dr.Cherian as also of his application for stay and injunction in C.S.No.848 of 200 2 may also be noticed for the sake of completion. Those appeals and applications were dismissed by the Division Bench on 9.7.2003. The judgment of the Bench is reported in 2003-3-L.W. 320.

41. We have heard Mr.Sriram Panchu, learned Senior Counsel for the petitioner, the learned Advocate General, who appeared for the official respondents, Mr.Chandru, learned Senior Counsel who appeared for Dr.Cherian and for Mrs.Nellimala, Mr.A.L.Somayaji, learned Senior Counsel who appeared for Alex Jacob, and Mr.Prabhakaran, advocate, who appeared for P.V.Thomas.

42. Mr.Sriram Panchu, learned Senior Counsel for the petitioner submitted that the Secretary to the Government has been misled by Dr. Cherian, who had failed to disclose to the Government all the relevant facts and who had, on account of his frustration in not being able to regain his position as the Chairman of the PIMS committee and whose attempts to divest MMM of its control of PIMS, had come to naught by reason of the prompt action taken by the MMM, sought to make use the machinery of the State to some how dislodge the committee of MMM which had taken firm action against him. The Inspector General of Registration, instead of independently applying his mind to the action appropriate to the facts as reported to him by the enquiry officer, had allowed himself to be influenced by the suggestion made in the letter of Dr.Cherian for action under Section 34-A and had recommended the appointment of a Special Officer, even when the facts did not even remotely warrant resort to such a drastic step. The suggestion made by the Inspector General had been uncritically adopted by the Secretary to the Government, without realising its serious adverse impact on the complex activities of a super speciality hospital and a medical college the combined value of whose

assets was over Rs.100 crores, and about whose finances and efficient administration there is no adverse finding by the enquiry officer. Counsel submitted that the whole action is tainted by legal mala fides as the extraordinary power meant to be invoked in grave situations has been resorted to even where the resort to that power was wholly unwarranted by the facts on record.

43. The facts gathered at the enquiry did not in any manner, it was submitted, justify the resort to this extreme measure and, therefore, the proposed action is outside the purview of Section 34-A of the Act, which provision itself, according to counsel, is unconstitutional, inasmuch as that provision as also Section 34-B impose unreasonable restriction on the right to form associations, a right guaranteed under Art.19 (1) (c) of the Constitution, and permits discriminatory treatment by enabling the Government to make an arbitrary choice as to which statutory provision to resort to in identical fact situations rendering them void by reason of violation of Art.14 of the Constitution.

44. Learned Advocate General submitted that Sections 34-A, and 34-B which is consequential to 34-A, are not violative of Art.14 or Art.19 (1) (c), as they do not in any manner affect the formation, continued existence and the composition of the Society, and the action which the Government may take under s.34 (1), s.37 and s.34-A are qualitatively different, depending upon the nature and gravity of the fact situation. It was also submitted that the power under s.34-A is distinct and separate from the power conferred under s.36 and 37 and there is no requirement in s.34-A that resort must first be had to s.35 or 3 6, unlike s.37 which specifically provides that the power conferred thereunder may be exercised only after an enquiry has been held under s.36 (1). As regards the impugned letter of the Secretary, it was his submission that it is only a show cause notice and therefore no writ petition would lie against such notice to which the petitioner has a right to submit a reply.

45. Mr.Chandru, learned Senior Counsel appearing for Dr.Cherian supported the action taken by the Government and submitted that the writ petition is wholly premature and that the petitioner should submit their reply to the Secretary's letter which is a show cause notice, to the Government and not to the Court. Counsel also submitted that the present committee of MMM had no right to convene an Annual General Meeting to amend the by-laws after it received the impugned notice.

46. Mr.A.L.Somayaji, learned Senior Counsel appearing for Alex Jacob, submitted that the right to form an association under Art.19 (1) (c) is not adversely affected by action taken under s.34-A as supersession is only of the committee, and the Society would continue to exist. He relied upon decisions of the Supreme Court and various High Courts wherein actions taken by the State in relation to Associations/ Co-operative Societies, and/or their property have been upheld.

47. Mr.Prabhakaran submitted that having regard to the affairs of MMM supersession of its committee was necessary.

48. The Tamil Nadu Societies Registration Act, which came into force on 22nd April, 1978 is far more elaborate than the Societies Registration Act of 1860 (Central Act XXI of 1860). In the Act as originally enacted, there was no provision for supersession of the committee of a Society. S.36 empowered the Registrar to inquire into the affairs of the Society, s.37 and 38 to cancel the registration of the Society and s.40 to wind up the Society. Sections 36, 37, 38 and 40 read as under:-

"Section 36. Power of Registrar to inquire into the affairs of registered society:-

(1) The Registrar may, of his own motion or on the application of a majority of the members of the committee of a registered society or on the application of not less than one-third of the members of that registered society, or if so moved by the District Collector hold or direct some person authorised by the Registrar by order in writing in this behalf to hold, an inquiry, into the constitution, working and financial condition of that registered society.

(2) An application to the Registrar under sub-section (2) shall be supported by such evidence as the Registrar may require for the purpose of showing that the applicants have good reason for applying for an inquiry.

(3) The Registrar may require the applicants under sub-section (1) to furnish such security as he thinks fit for the costs of the proposed inquiry, before the inquiry is held.

(4) All expenses of, and incidental or preliminary to, the inquiry shall, where such inquiry is held --

(a) on application, be defrayed by the applicants therefor or out of the assets of the registered society or by the members or officers of the registered society, in such proportions as the Registrar may, by order in writing, direct; and

(b) on the District Collector's or Registrars motion, be defrayed out of the assets of the registered society, and shall be recoverable as an arrear of land revenue.

(5) An order made under sub-section (4) shall, on application, be enforced by any Civil Court having local jurisdiction in the same manner as a decree of such court.

(6) A person holding an inquiry under this section shall at all reasonable times have free access to all the books, accounts and documents of the registered society, and shall have power to call upon the registered society and the officers of society to produce such books, accounts and documents and furnish such statements and other information in relation to its business as he may direct.

(7) It shall be the duty of all persons who are or have been officers of the registered society to furnish the inquiring officer with all the books, accounts, and documents in their custody or power relating to the registered society.

(8) A person holding an inquiry under this section may summon any person who, he has reason to believe, has knowledge of any of the affairs of the registered society and may examine such person on oath and may summon any person to produce any books, accounts or documents belonging to him or in his custody if the person holding the inquiry has reason to believe that such books, accounts or documents contain any entries relating to transactions of the registered society.

(9) The result of the inquiry shall be communicated to the registered society and to the applicants, if any, and if the Registrar is satisfied that the result of the inquiry does not warrant action under section 37, he may issue such direction to the registered society, or any number of the registered society, as the Registrar may deem fit.

Section 37. Cancellation of registration:- When an inquiry has been held under section 36, the Registrar may, if he is satisfied ---

(a) that the registered society has contravened any of the provisions of this Act or the rules made thereunder; or
(b) that the registered society is insolvent, or must necessarily become so; or

(c) that the business of any such registered society is conducted fraudulently or not in accordance with the bye-laws or the objects specified in the memorandum filed with the Registrar under section 6, after giving in such manner, as he thinks fit, previous notice in writing to the registered society, specifying briefly the grounds of the proposed cancellation and after giving an opportunity to the registered society to show cause why the cancellation should not be made, cancel the registration of the registered society, and communicate the order of cancellation forthwith to the registered society by registered post.

section 38. Cancellation of registration of society carrying on unlawful activities.-- (1) If it appears to the Registrar that any registered society is carrying on any unlawful activity or allows unlawful activity to be carried on within any premises under the control of the society, the Registrar may hold an inquiry into the activities of such society, and in respect of every such enquiry, the Registrar shall have the ame powers as are specified in sub-sections (6), (7) and (8) of section 36.

(2) If on an enquiry under sub-section (1), the Registrar is satisfied that any such society has been carrying on any lawful activity or has allowed any unlawful activity to be carried on within any premises under the control of the society, he shall, after giving reasonable notice to the society to show cause why the registration of the society should not be cancelled and after considering the representations, if any, made on behalf of the society,

by order cancel the registration of the society. The Registrar shall communicate the order of cancellation forthwith to the registered society.

Explanation.-- For purposes of this section, an activity shall be deemed to be unlawful if such activity is an offence punishable under any provision of law for the time being in force.

Section 40. Winding up of registered society.-- (1) Where the registration of a registered society is cancelled, the Registrar may appoint a liquidator to wind up the society if the society has not within such period as may be prescribed from the date of the order of cancellation, taken any action under Section 39.

(2) A liquidator shall have power subject to the control of the Registrar--

(a) to institute or defend any action or other legal proceedings on behalf of the registered society by his name of office;
(b) to determine, from time to time, the contribution to be made or remaining to be made by the members of the registered society, respectively, to the assets of the registered society;

(c) to investigate all claims against the registered society and, subject to the provisions of this Act, to decide questions of priority arising between claimants;

(d) to determine by what persons and in what proportions the costs of the liquidation are to be borne; and

(e) to give such direction in regard to the collection and distribution of the assets of the registered society as may appear to him to be necessary for winding up the affairs of the registered society.

(3) Subject to any rules of procedure made under this Act a liquidator shall in so far as such powers are necessary to carry out the purposes of this Section, have power to summon and enforce the attendance of witnesses and to compel the production of documents, as far as may be, by the same means and in the same manner as is provided in the case of a Civil Court by the Code of Civil Procedure, 1908 (Central Act V of 1908).

(4) An order made under this section shall, on application, be enforced by any Civil Court having local jurisdiction in the same manner as a decree of such Court. "

49. Sections 34-A and 34-B were introduced by the amending Act of 16 of 1994 so as to enable the Government to supersede the managing committee of any society in the circumstances mentioned therein and appoint a Special Officer to manage the affairs of the society for a period not exceeding the maximum specified in s.34-A.

50. Section 34-A reads as follows:-
"Supersession of Committee.-- (1) (a) If, in the opinion of the Government,--

(i) the Committee of any registered society is not functioning properly, or

(ii) the affairs of any registered society are mismanaged, or

(iii) the registered society's activities are not in furtherance of the objects of the society, or

(iv) the committee of any registered society has contravened any of the provisions of this Act or the rules made thereunder, or wilfully disobeys or wilfully fails to comply with any lawful order or direction issued under the provisions of the Act or the rules made thereunder, the Government may, after giving the committee an opportunity of making its representations, by order in writing supersede the committee and appoint a person (hereafter in this section and in section 34-B referred to as the special officer) to manage the affairs of the society for a specified period not exceeding one year.

Provided that nothing in this clause shall prevent the appointment of the same person as special officer for two or more registered societies.

(b) The period specified in such order may, at the discretion of the Government, be extended from time to time provided that such order shall not remain in force for more than three years in the aggregate.

(2) The Special Officer appointed under sub-section (1) shall, subject to the control of the Registrar and to such directions as he may, from time to time, give, have power to exercise all or any of the functions of the committee and to take such action as may be required in the interest of the societies.

(3) The Registrar may fix the remuneration payable to the special officer appointed under sub-section (1). The amount of remuneration so fixed and such other expenditure incidental to the management of the society during the period of supersession as may be approved by the Registrar shall be payable from the funds of the registered society.

(4) The Special Officer appointed under sub-section (1) shall arrange for the constitution of a new committee in accordance with the provisions of this Act and the rules made thereunder and the bye-laws of the registered society so that the new committee may be constituted and the members thereof come into office at any expiry of the period of appointment of the special officer.

(5) Nothing contained in this section shall be deemed to affect the power of the Registrar to order the winding up of the society under section 40.

(6) An order under sub-section (1) shall take effect from the date

specified therein."

51. Section 34-B is consequential and provides for delivery of possession of records and properties of the society to the special officer.

52. Decisions of the Supreme Court, of this and other High Courts cited by counsel with regard to the scope of Art.19 (1) (c) and the validity of s.34-A and 34-B vis-a-vis that article may now be noticed.

53. In the case of All India Bank Employees' Association v. The National Industrial ribunal (AIR 1962 SC 171), a Constitution Bench of the Supreme Court held, inter alia thus:

"In our opinion, the right quaranteed under sub-cl. (c) of Cl.(1) of Art.19 extends to the formation of an association, and in so far as the activities of the association are concerned or as regards the steps which the union might take to achieve the purpose of its creation they are subject to such laws as might be framed, and that the validity of such laws is not to be tested by reference to the criteria to be found in Cl. (4) of Art.19 of the Constitution."

54. In the case of Smt.Damayanti v. The Union of India (1971) 1 SCC 678, a Constitution Bench of the Apex Court struck down the Central enactment acquiring the Hindi Sahitya Sammelan and held that the right to form an association under Art.19 (1) (c) includes a right to it' s continuance, and any law altering the composition of the Association compulsorily will be a breach of the right to form the association. The Court, inter alia, held that, "the right to form an association, in our opinion, necessarily implies that the persons forming the Association have also the right to continue to be associated with only those whom they voluntarily admit in the Association. Any law, by which members are introduced in the voluntary Association without any option being given to the members to keep them out, or any law which takes away the membership of those who have voluntarily joined it, will be a law violating the right to form an association. ..... The right can be effective only if it is held to include within it the right to continue the Association with its composition as voluntarily agreed upon by the persons forming the Association."

55. In the case of O.K.Ghose v. E.K.Joseph (AIR 1963 SC 812) the Constitution Bench held that the restriction placed on Government Servants to form unions infringed the fundamental right of the Government servants to form associations or unions guaranteed under Art.19 (1) (c) and could not be justified as a reasonable restriction imposed in the interest of public order under Art.19 (4). The Court reiterated what had been said by two other Constitution Benches earlier that the rule prohibiting Government Servants from striking was valid as there was no fundamental right to strike.

56. In the case of L.N.Mishra Institute of Economic Development and Social Change, Patna vs. State of Bihar (1988) 2 SCC 433, a two Judge Bench, at paragraph 32, relying on the decision in All India Bank Employees Association's case, held thus:-

"The fundamental right guaranteed under Art.19 (1) (c) does not extend to or embrace within it the objects or purposes or the activities of an association. In other words, it does not carry with it a further guarantee that the objects or purposes or activities of an association so formed shall not be interfered with by-law except on grounds as mentioned in Article 19 (4), viz., sovereignty and integrity of India or public order or morality."

In the case of L.N.Misra (supra) the court held that the acquisition of the institute run by the petitioner society even though that was the main and only activity of the society did not violate Art.19 (1) (c) of the Constitution as the continued existence of the society was not in any way interfered with.

57. A Division Bench of this Court in the case of S.Ramakrishnaiah v. The President, District Board, Nellore and others (AIR 1952 Mad. 25 3) held that a Government order compelling teachers in local Board or Municipal service to obtain the permission of the Board or Council concerned before forming unions, and in so far as they prohibit teachers in recognised elementary schools from becoming members of teachers unions or others teachers' organisations not constituted in accordance with the orders of the Government was violative of the petitioner's right of freedom of association guaranteed under Art.19 (1) (c).

58. In the case of Peddanaickenpalayam Co-operative Agricultural Bank Ltd., v. Government of Tamil Nadu and others (AIR 1979 Mad. 241), a Division Bench of this Court held that appointment of Managing Director by the Government for any apex society under Section 73-J of the Tamil Nadu Co-operative Societies Act did not violate the fundamental right to form association under Art.19 (1) (c) of the Constitution.

59. A learned single Judge of this Court in the case of Periyar Self-Respect Propaganda Institution, Trichy and others v. State of Tamil Nadu and others (AIR 1988 Mad.27) held that Sections 15 (3) and 15 (4) of the Tamil Nadu Societies Registration Act, in so far as they have put an end to life membership or life offices did not offend Art.19 (1) (c). It was also held in that case that Section 26 (4) of the Tamil Nadu Act 27 of 1975, in so far as it empowered the Registrar to nominate an officer subordinate to him to be present at any general meeting of the Society did not offend Art.19 (1) (c) of the Constitution.

60. The provisions in the State Co-operative Societies Acts providing for compulsory amalgamation of two or more co-operative societies were upheld by the High Courts of Patna, Karnataka and Andhra Pradesh in the cases of Harakh Bhagat and another v. Assistant Registrar, Co-operative Societies, Bharh and others (AIR 1968 Pat. 211); H. Puttappa and others v. The State of Karnataka and others (AIR 1978 Kar. F.B. 148); and Seethapathi Nageswara Rao and others v. The Government of A.P. and others (AIR 1978 A.P. 121), after holding that such compulsory amalgamation did not violate the fundamental right guaranteed under Art.19 (1) (c).

61. The rights guaranteed under Art.19 of the Constitution are rights given to the citizens of India. They are not rights given to the legal

entities constituted by the citizens. Associations or unions are not defined in the Constitution. There is no mandate in Art.19 that the right given is only to form associations or unions recognised as such by statute. The right to receive recognition for any association or union is not guaranteed by Art.19 (1) (c). Recognition of an association or union would depend upon the requirements of the statute or rules providing for recognition and the compliance with such requirements by the association or union seeking such recognition.

62. The right to form association or union is limited to what the words used convey viz., the formation of the association, which has been held to include the continuation thereof, and no more. The attainment of the objects of the association or the effective pursuit of its activities is not covered by Art.19 (1) (c).

63. When an order is passed under Section 34-A of the Tamil Nadu Societies Registration Act, the right of the member to continue as a member of the Society as also the continued existence of the society is in no way impaired. During the period of supersession, instead of the Committee elected by the members in accordance with its constitution and bye-laws managing the affairs of the Society, the Committee's powers are to be exercised by the Special Officer appointed by the Government. That Special Officer will have no power to unilaterally alter the objects of the Society or it's composition. The Special Officer is as much bound by the memorandum and rules of the Society as the elected committee is. He may only exercise the powers which the committee could have exercised. That is specifically provided under Section 34-A (2), which inter alia provides that "he shall have power to exercise all or any of the functions of the committee and to take such action as may be required in the interest of the societies".

64. We do not, therefore, find any substance in the challenge to the constitutional validity of Sections 34-A and 34-B of the Tamil Nadu Societies Registration Act, 1975. on account of its alleged violation of citizens' right under Art.19 (1) (c) of the Constitution.

65. Decisions cited by counsel with regard to the scope of Art.14 in the context of the argument that s.34-A and 34-B are violative of petitioner's rights under Art.14 may now be considered.

66. A seven Judge Bench of the Supreme Court in the case of State of West Bengal vs. Anwar Ali Sarkar (AIR 1952 SC 75), held by a majority that the West Bengal Special Courts Act (10 of 1950) was unconstitutional as it empowered the State Government to pick and choose classes of cases and offences for being tried by a special Court which followed a procedure which was less advantageous to the accused than that provided under the Code of Criminal Procedure. It was held that the Act did not provide sufficient guidance, and the power given to the State to choose at it's will the offences and cases for being tried by a special Judge as also procedure prescribed under that Act, resulted in discriminatory treatment to those chosen to be tried under that Act.

67. In the case of Suraj Mall Mohta and Co. vs. Visvanatha Sastri (AIR 1954 SC 545) a Constitution Bench of the Apex Court held that the Taxation On Income (Investigation Commission) Act, 1947 was discriminatory and unconstitutional as the procedure provided therein in respect of assessees subjected to proceedings under that Act was onerous compared to that provided under the Income-tax Act, and that persons dealt with under the special enactment were similarly placed as those covered by the Income-tax Act.

68. The Court held in the case of Suraj Mall Mohta that, "If persons dealt with by the impugned Act are deprived of the substantial and valuable privileges which they would otherwise have if they were dealt with under the Income-tax Act, in that situation it is no defence to say that the discriminatory procedure also advances the course of justice. The matter has to be judged from the point of view of the ordinary reasonable man and not from the point of view of the Government."

69. In Maganlal Chhaganlal (P) Ltd. vs. Municipal Corporation of Greater Bombay, (1974) 2 SCC 402, a seven Judge Bench over-ruling the decision of the Constitution Bench in the case of Northern India Caterers vs. State of Punjab, AIR 1967 SC 1581 held that the failure to resort to alternative procedure by way of suit for eviction of the occupants of the buildings owned by the Government or Corporation owned by the State, did not result in discrimination against those subjected to special shortened procedure for eviction provided in the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 as the Act contained clear guidelines as to when it's provisions can be invoked.

70. In the case of Pandia Nadar vs. State of Tamil Nadu, (1974) 2 SCC 539, a Constitution Bench held that the alternate procedure for eviction in the Tamil Nadu Land Encroachment Act was constitutionally valid.

71. In the case of Organo Chemical Industries v. Union of India (AIR 1979 SC 1803) it was held that the power conferred under Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 to impose damages on an employer defaulting in payment of contributions to the provident fund, is not unguided and arbitrary power and, therefore, not violative of Art.14 of the Constitution. It was also held in that case that such damages were penal in nature.

72. In the case of Joint Registrar of Co-operative Societies vs. Rajagopal, AIR 1970 SC 992, the Supreme Court held that for superseding a co-operative society under the Tamil Nadu Co-operative Societies Act prior audit enquiry, and opportunity to rectify, were not preconditions.

73. In the case of A.N.Parasuraman vs. State of Tamil Nadu, AIR 19 90 SC 40, which was an appeal from a judgment of this Court reported in AIR 1972 Madras 123, the apex Court held that the Tamil Nadu Private Educational Institutions (Regulation) Act was unconstitutional as the Act did not lay down any guidance for the exercise of the power by the delegated authority as a result of which the authority was in a position to act according to its whims.

74. In the case of Andhra Pradesh State Financial Corporation vs. M/s. Gar Re-rolling Mills, JT 1994 (1) SC 586, a two Judge Bench held that it was open to the State Financial Corporation to take recourse to the remedy available to it under Section 29 of the State Financial Corporation Act even after obtaining an order and decree invoking the provisions of Section 31, but without executing the decree. It was further held therein that when two remedies are available for the same relief, the party to whom such remedies are available has the option to elect either of them, but that doctrine would not apply to cases where the ambit and scope of the two remedies are essentially different.

75. In the case of J.Jayalalitha vs. Union of India (1999) 5 SCC 138 , the Court held that the Prevention of Corruption Act, 1988 provides sufficient guidance to the State Government in choosing the circumstances in which it may constitute special Courts.

76. S.34-A of the Act sets out the circumstances in which supersession can be resorted to. It cannot be said that there is no legislative guidance with regard to the circumstances in which supersession can be effected and that the exercise of that power is not subjected to any limitation.

77. Before the power under that provision can be exercised, the Government should form the opinion that the Committee of the Society is not functioning properly, or that it's affairs are mismanaged or that it's activities are not in furtherance of the objects of the society, or that the committee has contravened any of the provisions of the Act or the Rules made thereunder, or that it had wilfully disobeyed or wilfully failed to comply with any lawful order or direction issued under the provisions of the Act. The power is to be exercised by a high authority and is not a power which can be exercised in a casual manner or in circumstances which are not sufficiently grave to warrant the exercise of that power.

78. Supersession does not result in any discrimination against the committee that is superseded when compared to committees of other societies. The fact that under Section 36 the Registrar has the power to make an enquiry and, after such enquiry, may issue such directions as he may think fit does not in cases where he is not of the view that the registration of the society itself is to be cancelled, result in any hostile discrimination when the Government chooses to exercise the power of supersession under Section 34-A. While the power under Section 36 is to be exercised by the Registrar, that under Section 34-A is by the higher authority viz., the Government. The action that the Registrar may take is qualitatively different from the action that the Government may take under Section 34-A. If the Registrar, after the enquiry, decides to cancel the certificate of registration, the society is required to forthwith cease to carry on business except for the beneficial winding up and for that purpose it is required to pass a special resolution and dissolve itself in the manner provided under Section 41. On dissolution, the society will cease to exist. If, on the other hand, the Registrar chooses to give directions, the society will continue to function. In case the Society does not carry out those directions, it will make itself liable to

have it's committee superseded by the Government under Section 34-A. The supersession on the ground that direction has not been obeyed is one among several other grounds on which supersession can be effected, and is not the only ground. Section 34-A does not make any reference to Section 36 and does not mandate that the enquiry under Sec.36 should precede the making of an order under Section 34-A.

79. Supersession of the committee while it deprives the elected committee of the right to manage the affairs of the society for a limited period does not bring about an end to the existence of the society, nor does it result in the society having to compulsorily wind up itself. This is in contrast to the effect of an order of cancellation of registration, which the Registrar may direct after an enquiry held under Section 36, if the result of the enquiry is such as to warrant cancellation of registration.

80. The plea of discrimination, therefore, is without any tenable basis. The circumstances in which the enquiry may be held under Section 36 (1) are not spelt out in Section 36 (1), while situations in which the supersession can be effected are laid down in Section 34-A. The power to order an enquiry under Section 36 (1) is a very wide power. The enquiry may be held by the Registrar on his own motion or on the application of a majority of the members of a committee of a society, or on the application of not less than 1/3 members of the society or at the request of the District Collector. Such enquiry can be with regard to the constitution, working and financial condition of the society. This wide power given to the Registrar to direct an enquiry under Section 36 (1) into the affairs of the society from it's constitution upto its working and financial condition, is a power which the Registrar is required to exercise with a view to ensure that the society functions in accordance with law. The power given to the Government under Section 34-A to supersede the committee is a power which is meant to be used in sufficiently grave 3situations in the best interest of the society itself, with a view to safeguard the interest of the society and of it's members. It enables the Government to act promptly in cases where immediate intervention is called for, having regard to all the facts and circumstances of t he case and the gravity of the situation. Section 34-A does not offend Art.14.

81. We may now refer to the decisions cited at the Bar with regard to issue of notice and the circumstances in which petitions challenging a show cause notice may or may not be entertained.

82. A three Judge Bench of the apex Court in the case of East India Commercial Co. Ltd. vs. Collector of Customs, 1983 ELT 1342 (SC) by a majority held that whether a statute provides for notice or not, it is incumbent upon the quasi-judicial authority to issue a notice to the concerned persons disclosing the circumstances under which proceedings are sought to be initiated against them, otherwise principle of natural justice are necessarily violated.

83. In the case of Chanan Singh vs. Registrar of Co-opearive

Socieites (1976) 3 SCC 361, it was held by the apex Court that as no punitive action had been taken against the petitioner while he was an employee of a co-operative bank and the writ petition filed by him was required to be rejected as being premature.

84. In the case of G.F.Industries v. Union of India (AIR 1977 SC 456), a three judge bench of the Court held that in the absence of any order either judicial or quasi judicial, which could attract certiorari no certiorari could be issued. That was a case where a notice under Section 131 (3) of the Customs Act 1962 for revision of an order of refund had been questioned. The Court held that that notice was neither a judicial nor quasi-judicial order. The court further held that no mandamus could go because there was nothing which was required to be done or forborne under the Act. It was observed that the issue of notice required the parties to represent their case and that no prohibition could be issued as the Central Government had jurisdiction to revise.

85. In the case of Executive Engineer, B.S.H.B. v. Ramesh Kumar Singh (1996) 1 SCC 327, a two judge bench of the Court held that the High Court erred in entertaining the writ petition which involved disputed questions of fact. The petition in that case was directed against a show cause notice issued by the Housing Board to explain as to why an order of eviction should not be passed against the petitioner for his unauthorised living in a portion of a house allotted by the Board on hire purchase basis to another person. The Court held that the basic fact on which jurisdiction to initiate proceedings against the petitioner was required to be investigated and adjudicated upon by the competent authority, and such investigation having been made, the Court should not have entertained the writ petition.

86. A Division Bench of this Court in the case of M/s Madurai Metal Industries v. Union of India (1991 Writ.L.R., 59), set aside a show cause notice issued by the Collector of Central Excise on the ground that the wordings of the show cause notice indicated a preconceived or prejudged and foreclosed mind.

87. A learned single Judge of this Court in a case which arose under the Tamil Nadu Co-operative Societies Act, 1983, in the case of Arignar Anna Weavers Co-op Society Ltd. v. State of T.N. (AIR 1999 Mad. 2 54) held that non-furnishing of the copy of the enquiry report on the basis of which the order of supersession had been issued resulted in violation of principles of natural justice and therefore the order of supersession was not valid. In that case, the material on the basis of which action has been initiated under Section 88 of the 1983 Act had not been disclosed, but it was admitted in the counter filed in the High Court that it was on the basis of the report under Section 8 2 of the Act.

88. It was submitted by the learned counsel for the writ petitioners that the Secretary to the Government has already made up his mind as is evident from the language employed in the impugned letter calling upon the petitioners to submit their explanation. However it is clear from the very caption of the letter that it is a show cause notice and a final decision is

to be taken only after providing opportunity to the petitioners to submit their reply and after consideration of that reply.

89. Though the submission that the issuance of the show cause notice itself was tainted by legal mala fides is not wholly without substance having regard to the background and the manner in which the matters have proceeded and the stand taken in the counter affidavit while seeking to sustain the notice by even relying on allegations which even the officer holding the enquiry had rejected, we do not consider it proper for this Court to interfere with that notice at this stage as the petitioner has opportunity to bring all the relevant facts to the notice of the Government which has a legal duty to act objectively and fairly, and refrain from using its power under s.34-A unless matters are sufficiently grave.

90. The Government cannot and should not allow itself to become a tool in the hands of Dr.Cherian, who is bent upon settling scores with the members of the committee of the society. His conduct has been examined in some detail in the judgment of this Court reported in Dr. K.M.Cherian v. K.V.George (2003-3-L.W. 320). None of the matters on which the enquiry officer has reported as matters requiring attention, having regard to the facts noticed in this order, are prima facie so grave as to warrant supersession.

91. Certain observations made by the Supreme Court in a recent decision with regard to the conduct of the officers dealing with the rights of office holders of elected bodies, are apposite. A three Judge Bench of the Apex Court, in the case of Tarlochan Dev Sharma v. State of Punjab and others (2001) SCC 260, has observed:

"In the system of Indian democratic governance as contemplated by the Constitution, senior officers occupying key positions such as Secretaries, are not supposed to mortgage their own discretion, volition and decision making authority and be prepared to give way or being pushed back or pressed ahead at the behest of politicians for carrying out commands having no sanctity in law. ... As already stated, we are not recording, for want of adequate material, any positive finding that the impugned order was passed at the behest of or dictated by someone else that its author. Yet we have no hesitation in holding that the impugned order betrays utter non-application of mind to the facts of the case and the relevant law. The manner in which the power under Section 22 has been exercised by the competent authority is suggestive of betrayal of the confidence which the State Government reposed in the Principal Secretary in conferring upon him the exercise of drastic power like removal of President of a Municipality under Section 22 of the Act."

The statutory provision that was considered by the Court in that case was one which provided for the removal of the President of a Municipality from his office by the State Government on the ground, inter alia, of abuse of his powers. The Court found that the Principal Secretary who directed the President's removal on that ground had himself abused the power conferred on him under the Act to direct removal of the President of the Municipality.

92. We hope and trust that the action of the Government, after the petitioners submit their replies to this notice will not be such as to invite observation of the nature that the Apex Court found it necessary to make in the aforementioned case.

93. The petition seeking a declaration that Sections 34-A and 34-B of the Tamil Nadu Societies Registration Act, 1975 are violative of Articles 14 and 19 and therefore unconstitutional, are dismissed.

94. The petition in which a copy of the report of the enquiry officer is sought is allowed as it is the duty of the Government to make available to the affected party the materials on basis of which it seeks to act. There is no justification whatsoever for withholding from the petitioner the report of the enquiry in which the petitioner had been asked to participate and had in fact participated and provided all the information that had been sought by the enquiry officer. Though the Government is not in terms of s.34-A bound to have an enquiry made under Section 36 in all cases, it is prudent to have such an enquiry made so that the facts are properly ascertained. The report of enquiry being the basis for the issue of the notice to the Society, the

Society is entitled to the copy of that report in order to enable it to reply effectively to the notice. As noticed by us earlier the report was furnished to the Society during the pendency of these petitions.

95. The petition challenging the letter dated 20.11.2002 of the Secretary to the Government, which is in fact a show cause notice, is dismissed, subject to what has been stated in the course of this judgment. We, however, grant further time to the petitioners to file their reply to that notice. Such reply shall be filed within a period of four weeks from today.

96. The applications filed in the suit filed by Alex Jacob who pleaded the case of Dr.Cherian are dismissed as the matters sought to be agitated in those applications are matters with regard to which appropriate directions have been given in the judgment of this Court reported in 2003 W.L.R., 214. Nothing more is called for having regard to all the facts and circumstances of the case.

97. Regarding the application filed by Mrs.Nallimala, the plaintiff in C.S.No.904 of 2002, seeking injunction to restrain the society from holding its extraordinary general body meeting, that meeting having been properly convened by the committee, there is no reason to interfere with the holding of the meeting solely on the ground that notice of supersession has been issued. The committee is not deprived of its rights merely on the issuance of such a notice. We also have grave doubts about the bona fides of this plaintiff. Her action is apparently intended to aid Dr.Cherian and no more. The agenda for the meeting is to consider the amendment of only those by-laws, which in the opinion of the authorities require amendment.

98. When the society was registered these by-laws had been approved by the concerned authorities, who, had they been more vigilant, could have

pointed out the defects in the by-laws at the time of registration. Having allowed those by-laws to be followed for almost two decades, the authorities have now pointed out the fact that some of those bylaws do not conform to the requirement of the Act and the Rules. The prompt action taken by the committee of the society to convene a meeting of the general body for the purpose of amending the same is a perfectly proper step and it would be an abuse of the process of the court to injunct such a meeting from being held. The holding of such a meeting will cause prejudice to no one as the meeting is to be held after due notice and all the members of the society are entitled to take part in the meeting and vote. That application is dismissed.

Index: Yes
Website: Yes

To

1. The Chief Secretary to Government,
State of Tamil Nadu,
Fort St. George, Chennai 9.

2. The Secretary to Government,
Commercial Taxes Department,
Secretariat,
Chennai 9.

3. The Inspector General of Registration,
120 Santhome High Road,
Chennai 28.

4. The District Registrar,
Chennai (Central),
Chennai-18.